


MAY 09 2012

IV-8
\$8a. attachment

MEMORANDUM

MAY 09 2012

SUBJECT: Tribal Consultation and Coordination on EPA's May 10, 2011 Action on Idaho's New and Revised Human Health Water Quality Criteria for Toxics Submitted on July 7, 2006

FROM: Jannine Jennings
Office of Water and Watersheds 

TO: The Record

This memorandum outlines EPA's tribal coordination and consultation regarding its May 10, 2012 action on revisions to the human health criteria within Idaho's water quality standards (WQS) submitted on July 7, 2006. A chronology of activities conducted as part of EPA's tribal consultation and coordination is attached. Documents pertinent to this effort are contained in the administrative record for this action.

On December 1, 2005, Michael Gearheard, Director, Office of Water and Watersheds, EPA Region 10, sent letters to the chairs of ten tribes in and near the State of Idaho. Letters were sent to the **Shoshone-Bannock, Coeur d'Alene, Kootenai, Nez Perce, Umatilla, Warm Springs, Yakama, Kalispel, Spokane and Colville Tribes**. These letters notified the tribes of Idaho's proposal to revise the human health criteria contained in Idaho's Water Quality Standards (WQS), that a proposed rule would go to the legislature in January 2006 and that, if passed, the rule would be submitted to EPA for review and action under the Clean Water Act. The letter also offered the tribes the opportunity to consult with EPA on the proposed changes and EPA's upcoming action. No tribes notified EPA of their desire to consult at that time.

Idaho adopted revisions to its human health criteria and submitted them to EPA for review. EPA's action on these criteria was delayed for numerous reasons. Therefore, in November, 2011 EPA reinitiated discussions with the tribes relative to its upcoming action on these human health criteria revisions. On November 22, 2011 Mike Bussell, Director, Office of Water and Watersheds, EPA Region 10, sent letters to the chairs of the **Shoshone-Bannock, Coeur d'Alene, Kootenai, Nez Perce, Shoshone-Paiute, Burns Paiute, Umatilla, Kalispel and Spokane Tribes**. These letters informed the tribes of EPA's upcoming decision on Idaho's 2006 human health criteria revisions and offered the tribes an opportunity to consult with EPA on that action. In addition, the letter informed the tribes of an opportunity to hear more about EPA's upcoming action and provided a plan and timeline for Tribal consultation and coordination.

In response to this invitation, EPA heard from the **Shoshone-Bannock, Coeur d'Alene, Kootenai, Nez Perce, Umatilla, Kalispel and Spokane Tribes** that they would either like to consult with EPA or have additional discussions with EPA on this matter. In addition, EPA received notification from the **Yakama Nation, Colville Tribe, Columbia River Inter-Tribal Fish Commission and the Upper Columbia United Tribes** regarding their interests in this matter. In addition, the **Warm Springs** Tribe was contacted regarding their interest in this action and the **Region 10 Tribal Operations Committee** provided input to the Regional Administrator.

In response to the consultation requests received from the Tribes, EPA Region 10 Regional Administrator Dennis McLerran scheduled meetings with several tribes in Spokane, WA on January 18, 2012 and in Boise, ID on January 20, 2012. The meetings scheduled for Spokane were cancelled due to hazardous travel conditions and were rescheduled for February 15 and 16, 2012. Consultation meetings were held with the Coeur d'Alene Tribe on February 15, 2012 and with the Shoshone-Bannock Tribe on April 12, 2012. Dennis McLerran also participated in meetings with staff from the **Kootenai** and **Shoshone-Bannock** Tribes on January 20, 2012 and with leaders from the **Nez Perce**, **Umatilla**, and **Yakama Tribes** and the **Columbia River Inter-Tribal Fish Commission** on February 15, 2012. Christine Psyk, Associate Director, Office of Water and Watersheds, also attended these meetings and met with representatives from the **Spokane**, **Kalispel** and **Colville Tribes** and the **Upper Columbia United Tribes**. In those instances where the meetings were not identified as "Tribal Consultation" by the Tribe, EPA confirmed with the Tribe that no additional coordination or consultation was required at this time.

In order to assist in facilitating communication and coordination with the Tribes, in addition to sending the above identified letters, EPA staff held three informational calls with tribal staff on December 7 and 21, 2011 and February 22, 2012. Emails regarding these meetings were sent to Tribal staff and the calls were open to any official or staff interested in the upcoming action. During the conference calls EPA provided attendees with information on the project and the options under consideration by EPA. In addition, the attendees were given an opportunity to ask questions and provide EPA with additional information regarding tribal interests and potentially relevant data. EPA also sent tribal staff a number of emails providing updates on the upcoming action and soliciting additional information. Each of these emails encouraged tribes to provide EPA with any additional information that may be relevant and/or helpful to EPA's decision-making process and provided a person to contact if they had any questions.

Comments and Concerns

Each Tribe provided EPA comment on the pending review of Idaho's human health criteria and identified concerns specific to their Tribe, reservation and traditional fishing patterns. Amongst the issues addressed were concerns regarding the scope of a disapproval action, the need for the action to address the protection of downstream waters and Tribal treaty rights, the desire for additional data on tribal and recreational fish consumption in Idaho and questioned the appropriateness of a 17.5 gram per day fish consumption rate for Idaho. In addition, most tribes provided EPA with information related to their current and historical diet, subsistence uses and current efforts to restore their historical fisheries resources. Tribes expressed a variety of opinions regarding EPA's review of the criteria – some supported a proposal to approve the criteria for a portion of the state while others strongly encouraged EPA to disapprove the criteria statewide. Other tribes requested that EPA require Idaho to use specific fish consumption rates of 175 or 142 grams per day. All input received from the Tribes was taken into consideration by EPA as it made a decision about whether to approve Idaho's revised human health criteria.

Attachment: Tribal Consultation and Coordination Chronology, May 2012

Tribal Consultation and Coordination Chronology

EPA Action on Idaho's Human Health Criteria Submitted on July 7, 2006

May 2012

December 1, 2005 – Letters sent to the **Shoshone-Bannock, Coeur d'Alene, Kootenai, Nez Perce, Umatilla, Warm Springs, Yakama, Kalispel, Spokane** and **Colville Tribes** notifying them of a potential revision to Idaho's human health criteria and extending an offer to consult with tribes on EPA's upcoming action on those criteria.

November 21, 2011 – Email to Tribal Governments with background on an upcoming EPA action on Idaho's human health criteria and notifying them of the December 7, 2011 conference call.

November 22, 2011 – Letters sent to **Shoshone-Bannock, Shoshone-Pauite, Coeur d'Alene, Kootenai, Nez Perce, Umatilla, Kalispel, Burns Pauite and Spokane Tribes** describing upcoming EPA action on revised human health criteria in Idaho, the process EPA would use to coordinate with Tribes on this action and offering opportunity for Tribes to consult with EPA on this action.

December 7, 2011 – Conference call with Tribal Governments explaining background on EPA's upcoming action on Idaho's human health criteria and the opportunities available for Tribes to provide input to EPA and to consult with EPA on this decision.

December 8, 2011 – Email to Tribal Governments with follow-up information and next steps.

December 15, 2011 – Letter from Nez Perce Tribe to Mike Bussell requesting Government-to-Government consultation.

December 16, 2011 – Letter from Kalispel Tribe to Mike Bussell requesting Government-to-Government consultation.

December 20, 2011 – Letter from Confederated Tribes of the Umatilla Indian Reservation to Dennis McLerran requesting Government-to-Government consultation.

December 21, 2011 – Follow-up Conference Call with interested Tribal Governments discussing the data available for subsistence fishing in Idaho and EPA's upcoming action.

January 4, 2012 – Phone call with staff and legal counsel for Spokane Tribe regarding upcoming action. Christine Psyk, Jannine Jennings and Mary Lou Soscia in attendance.

January 5, 2012 – Follow-up letters to **Shoshone-Bannock, Coeur d'Alene, Kootenai, Nez Perce, Umatilla, Kalispel, Spokane Tribes, and Columbia River Inter-Tribal Fish Commission (CRITFC)** identifying potential times and locations for consultation meetings with Dennis McLerran. Potential meeting dates provided were January 18 and 20, 2012, in Spokane and Boise.

January 12, 2012 – Meeting in Seattle with Phil Cernera and Scott Fields of the Coeur d’Alene Tribe. Christine Psyk and Jannine Jennings in attendance.

January 15, 2012 – Letter from Region 10 Tribal Operations Committee to Dennis McLerran signed by Violet Yeaton requesting that EPA defer to information provided by Tribes in EPA’s upcoming decision on Idaho’s human health criteria.

January 18, 2012 – Spokane meetings cancelled due to hazardous travel conditions.

January 20, 2012 - Meetings in Boise with Tribal Staff from Kootenai Tribe and Shoshone-Bannock Tribe with Dennis McLerran. Christine Psyk and Jannine Jennings participated via phone.

January 24, 2012 – Letter from Harry Smiskin, Chair Yakama Nation, to Dennis McLerran requesting Government-to-Government consultation on February 15th at the Affiliated Tribes of Northwest Indians (ATNI) meeting and a meeting with Yakama Tribal Council March 6 – 8th, 2012.

January 27, 2012 – Letter from Gerald Lewis, Chairman, Columbia River Inter-Tribal Fish Commission, to Dennis McLerran, requesting Government-to-Government consultation at the ATNI meeting with the CRITFC member tribes (Nez Perce, Yakama and Umatilla Tribes) on February 15th.

February 2, 2012 – Letter from Dennis McLerran to Chairman Abrahamson, Spokane Tribe, responding to January 6, 2012, letter concerning Idaho human health work effort.

February 7, 2012 - Follow-up email to Tribal Governments informing them of extension to schedule for tribal consultation, recently identified data for Northern Idaho and Northeast Washington and discussing upcoming tribal consultation meetings scheduled for February 15 in Shelton, WA, with Dennis McLerran and February 16, with Christine Psyk, Jannine Jennings and Mary Lou Soscia.

February 15, 2012 – Meetings at Affiliated Tribes of Northwest Indians (ANTI) Meeting in Shelton, WA.

- EPA participation in a plenary session to discuss human health criteria work efforts in the northwest.
- Government-to-Government consultation meeting with Coeur d’Alene Tribe (Council Member Alfred Nomee and Scott Fields).
- Government-to-Government coordination meeting between Dennis McLerran and the Yakama Nation, Umatilla Tribe and Nez Perce Tribe. A representative from the Columbia River Inter-Tribal Fish Commission also attended.

February 16, 2012 – Tribal coordination meetings in Spokane with staff from Kalispel Tribe and Colville Tribe. A representative from the Upper Columbia United Tribes was also present at these meetings. Christine Psyk and Mary Lou Soscia attended in person, Jannine Jennings participated by phone.

February 22, 2012 - Follow-up conference call with interested Tribal Governments discussing the data d from Northern Idaho and Northeast Washington, upcoming schedule and future work efforts.

March 22, 2012 - Jannine Jennings provided an update to the Regional Tribal Operations Committee.

March 29, 2012 - Phone conversation between Christine Psyk and Scott Fields of the Coeur d'Alene Tribe regarding EPA's upcoming decision and the interrelationship of that action with EPA's upcoming action on the Coeur d'Alene Tribe water quality standards currently under review by EPA.

April 12, 2012 - Tribal Consultation with the Shoshone-Bannock Tribe at the Fort Hall Reservation – Dennis McLerran, James Wertz, Jim Woods in attendance; Christine Psyk via phone.